

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ALABAMA  
SOUTHERN DIVISION

WILLIAM STEWART,	}	
	}	
Plaintiff,	}	
	}	
v.	}	CIVIL ACTION NO.
	}	09-AR-0803-S
	}	
UNITED STATES OF AMERICA,	}	
	}	
Defendant.	}	

**MEMORANDUM OPINION**

The court has before it:

(1) The motion for summary judgment of defendant, United States of America;

(2) The report and recommendation of the magistrate judge that the said motion be granted;

(3) The objections of plaintiff, William Stewart, to the said report and recommendation, upon which an oral hearing was conducted;

(4) This court's certification of disputed issues of state law to the Supreme Court of Alabama, pursuant to Rule 18, Alabama Rules of Appellate Procedure; and

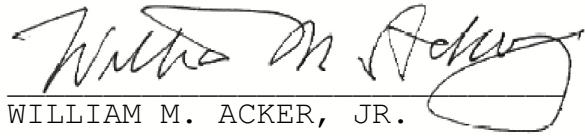
(5) The declination of the Supreme Court of Alabama to answer any of the questions.

Upon a *de novo* consideration of defendant's motion, and without a clarifying response from the Supreme Court of Alabama as sought by this court pursuant to the recommendation of the Eleventh Circuit in *In re: Cassell*, \_\_\_ F.3d \_\_\_, 2012 W.L. 3136495, at \*8 (11th Cir. 2012), this court agonizingly reaches the conclusion that the

magistrate judge, both in his rendition of the pertinent undisputed facts, and in his conclusions of law, was correct. For this reason, the report and recommendation is ACCEPTED, the objections of plaintiff are OVERRULED, and the report and recommendation is ADOPTED as the final opinion of this court.

A final order will be entered effectuating this opinion.

DONE this 29th day of October, 2012.

  
WILLIAM M. ACKER, JR.  
UNITED STATES DISTRICT JUDGE